SB CIVIL MISC. APPEAL NO. 2761/2006
(SUBE KHAN v. ANAND SWAROOP & ORS.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 24.8.06

Mr. Narendra Chaudhary for the appellant.
Mr. L.L. Gupta for the respondents.

The plaintiff appellant has challenged the order dated 1.8.06 passed by the Addl. District Judge No. 1, Deeg, District Bharatpur, whereby the appellant's application under Order 39 Rule 1and 2 C.P.C. has been rejected.

The brief facts of the case are that the appellant had filed a suit for specific performance and for permanent injunction. The suit was filed for the specific performance of the agreement entered into between the plaintiff and the respondents Nos. 1 to 5. Alongwith the suit an application for temporary injunction was also filed. According to the appellant he was in possession of the land in Khasra No. 93 measuring 2.51 hectare for the last thirty years. According to him the appellant and the respondents had entered into an agreement to sell on 30.10.05 wherein it was agreed that the said land would be sold for Rs. 3,20,000/-. The appellant further claimed that he had paid Rs. 2 lacs to the respondents. However, the respondents have refused to

sign the sale-deed and have refused to get the sale-deed registered. Infact, the respondents have denied the existence of the agreement to sale. The respondents Nos. 1 to 3 submitted their written statements wherein they denied the allegations made by the appellant. After hearing both the parties vide order dated 1.8.06, the learned Judge dismissed the temporary injunction application.

Mr. Narendra Chaudhary, the learned counsel for the appellant, contended that in order to prove his possession of the land the appellant had filed affidavits of certain villagers. However, the learned Judge has not noticed these affidavits in the impugned order.

On the other hand, Mr. L.L. Gupta, learned counsel for the respondents, has contended that the agreement to sell is a forged document. Even earlier in a case pending between the parties before the Revenue Court, the plaintiff did not produce the alleged agreement to sell dated 31.10.05. The said document has been fabricated only after the case which is pending before the Revenue Board. Moreover, he has not submitted the affidavit of the person who drafted the alleged agreement to sell and of the two attesting witnesses. Moreover, he has not submitted any receipt of the alleged

amount of Rs. 2 lacs which was paid to the respondents. Hence, he has supported the impugned order.

We have heard both the learned counsels and have perused the impugned order.

The learned Judge was required to see whether a prima facie case exists in favour of the appellant or not. The entire case of the appellant is based on the alleged agreement to sell. However, the veracity of the very agreement is in question before the trial court. The said agreement, admittedly, was not produced by the appellant in a case which was already pending between the parties. If agreement to sell was actually in existence, the same would have been produced by the appellant in the previous case. Therefore, the veracity of the agreement to sell becomes doubtful. Moreover, the affidavit of villagers cannot be believed until and unless those persons who have given the affidavits are subjected to cross-examination. At the preliminary stage of temporary injunction, the affidavits cannot be taken as the gospel truth. Furthermore, as noticed by the learned Judge, neither the affidavit of the person, who drafted the alleged agreement to sell nor the affidavit of the two

attesting witnesses have been submitted. Therefore, the learned Judge was certainly justified in rejecting the temporary injunction application.

In the result, there is no force in this appeal. It is, hereby, rejected. However, it is clarified that none of the observations made in this order shall influence the final decision of the suit.

(R.S. CHAUHAN) J.

MRG.